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ATTORNEY FOR APPELLANT:

PAUL D. STANKO
Crown Point, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

MARA MCCABE
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

CALVIN LYONS, JR.,

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 45A05-0606-CR-290

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas P. Stefaniak, Jr., Senior Judge
Cause Nos. 45G04-0409-MR-8, 45G04-0412-FA-61

May 10, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Calvin Lyons, Jr., appeals his fifty-year sentence for voluntary manslaughter, a Class B felony;¹ aggravated battery, a Class B felony;² and four counts of criminal recklessness as Class C felonies.³ Lyons argues the trial court's failure to consider his plea agreement and age as mitigating circumstances resulted in an inappropriate sentence.

We affirm.

FACTS AND PROCEDURAL HISTORY

On April 18, 2003, Lyons and three other men visited the residence of Emmanuel and Michael Williams to discuss an earlier fight. A skirmish erupted between Lyons and the Williams brothers. Lyons fired a handgun, killing Michael and seriously injuring Emmanuel.

On September 11, 2004, Lyons and Althirty Hunter, Jr., went to the residence of Jawuan Baker and Dino Moore looking for \$100 as payment for a prior drug transaction. When Hunter demanded payment, Moore grabbed him from behind. Lyons retrieved an AK-47 assault rifle and fired it at Moore, Baker, and Jeffery Morgan. Lyons killed Moore and seriously injured Baker and Morgan.

On September 16, 2004, the State charged Lyons with the murder of Moore and attempted murder and battery of Baker and Morgan. On December 30, 2004, a grand jury indicted Lyons for the murder of Williams. On February 24, 2006, Lyons and the State entered into a plea agreement. Lyons would plead guilty to voluntary manslaughter, aggravated battery, and criminal recklessness in connection with the

¹ Ind. Code § 35-42-1-3.

² Ind. Code § 35-42-2-1.5.

³ Ind. Code § 35-42-2-2.

shooting of Moore, Baker and Morgan and would plead guilty to three counts of criminal recklessness in connection with the death of Williams. In exchange, the State would dismiss the murder, attempted murder, and battery counts related to the shooting of Moore, Baker, and Morgan and the voluntary manslaughter count based on the death of Williams. The parties would argue sentencing to the trial court, but sentences relating to Moore, Baker, and Morgan would run consecutively. All sentences relating to Williams would run concurrently, but consecutive to the other counts. On April 28, 2006, the trial court sentenced Lyons to a total of fifty years.

DISCUSSION AND DECISION

Lyons argues his sentence is inappropriate. Ind. Appellate Rule 7(B) authorizes review of whether “the sentence is inappropriate in light of the nature of the offense and the character of the offender.” The advisory sentence “is the starting point the Legislature has selected as an appropriate sentence for the crime committed.” *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006). An advisory sentence may be modified so long as it is within a range of years between the minimum and maximum terms. *See* Ind. Code §§ 35-50-2-3 to -7. Under Ind. Code § 35-38-1-7.1, a trial court may consider enumerated aggravating circumstances and mitigating circumstances in determining specific sentence terms. However, the trial court “may impose any sentence that is . . . authorized by statute . . . regardless of the presence or absence of aggravating circumstances or mitigating circumstances.” Ind. Code § 35-38-1-7.1(d). If the trial court finds aggravating and mitigating circumstances, a sentencing statement must set forth specific reasons supporting the sentence the court imposes. Ind. Code § 35-38-1-3.

The defendant has the burden to persuade us his sentence is inappropriate. *McMahon v. State*, 856 N.E.2d 743, 749 (Ind. Ct. App. 2006).

Lyons argues the trial court should have considered his plea agreement and age as mitigating circumstances.

1. Plea Agreement

A defendant who pleads guilty is entitled to some benefit in return. *Williams v. State*, 430 N.E.2d 759, 764 (Ind. 1982), *appeal dismissed* 459 U.S. 808 (1982), *reh'g denied* 459 U.S. 1059 (1982). The benefit to the State is avoiding trial. However, a guilty plea does not automatically amount to a significant mitigating circumstance, particularly if the defendant received a substantial benefit in exchange for pleading guilty. *Sensback v. State*, 720 N.E.2d 1160, 1165 (Ind. 1999).

The trial court recognized Lyons entered a plea agreement, but gave it no weight. Lyons entered the agreement eighteen months after he was charged. The State's benefit was *de minimus* because the plea came only one month before trial. Lyons benefited because the plea agreement dismissed one count of murder, two counts of attempted murder, one count of voluntary manslaughter, and two counts of battery. Lyons faced a maximum sentence of 250 years before entering the agreement. The trial court did not abuse its discretion in giving no weight to the plea agreement as a mitigating circumstance.

2. Lyons' Age

Lyons waived his allegation the trial court failed to consider his age as a mitigating circumstance. Under Ind. Appellate Rule 46(A)(8), an appellant must support

each claim with argument including citation to the record, statutes, and other legal authorities. Failure to present a cogent argument amounts to waiver of an issue for appellate review. *Hollowell v. State*, 707 N.E.2d 1014, 1025 (Ind. Ct. App. 1999). Lyons does not cite any authority or advance a coherent argument. Therefore, we find this issue waived.

Waiver notwithstanding, a court is not required to “credit or weigh a possible mitigating circumstance as defendant suggests it should be credited or weighed.” *Ellis v. State*, 736 N.E.2d 731, 736 (Ind. 2000). “There are both relatively old offenders who seem clueless and relatively young ones who appear hardened and purposeful.” *Id.* And see, e.g., *Johnson v. State*, 725 N.E.2d 864, 868 (Ind. 2000) (holding age of twenty does not compel finding of mitigation).

The trial court found Lyons in need of commitment to a penal facility to receive the correctional and rehabilitative treatment best provided by such a facility. We conclude the trial court acted within its discretion in not finding age as a mitigating circumstance.

3. Appropriateness

While Lyons correctly notes the advisory sentence would be 28 years, the trial court found specific and individualized reasons to justify a sentence in excess of the advisory sentence. See *Monegan v. State*, 756 N.E.2d 499, 501-502 (Ind. 2001). The trial court noted Lyons is a 21-year-old man with a history of drug use. He has four juvenile adjudications. As an adult he has been convicted of possession of cocaine. The trial court also found prior attempts at rehabilitation were not successful and prior

leniency has not deterred Lyons' criminal behavior. Lyons was on probation when these crimes occurred. The trial court found Lyons' character is violent. Lyons' offenses resulted in two deaths and serious injuries to three men. The trial court gave specific reasons for the enhanced fifty-year sentence, and we do not find it inappropriate in light of Lyons' character and offenses.

CONCLUSION

The trial court did not abuse its discretion when it did not give weight to Lyons' two alleged mitigating circumstances. Lyons' sentence is not inappropriate in light of the nature of his offenses and his character.

Affirmed.

MATHIAS, J., and NAJAM, J., concur.